

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

SPECTRUM WT, *et al.*,  
Plaintiffs,

v.

WALTER WENDLER, *et al.*,  
Defendants.

Case No.: 2:23-cv-00048-Z

Hon. Matthew J. Kacsmaryk

**Expedited Ruling Requested by  
February 9, 2024**

---

**PLAINTIFFS' OPPOSED RULE 62(d) MOTION FOR  
INJUNCTION PENDING APPEAL**

Under Fed. R. Civ. P. 62(d) and Fed. R. App. P. 8(a)(1), Plaintiffs Spectrum WT, Barrett Bright, and Lauren Stovall ("Plaintiffs") respectfully move the Court for the following injunction pending appeal:

- a. Defendants Walter Wendler, Christopher Thomas, John Sharp ("Defendants"), and their employees, agents, servants, officers, and persons in concert with Defendants, are enjoined from denying Plaintiffs use of campus facilities, including Legacy Hall, on the basis of the anticipated content or viewpoint of Plaintiffs' planned March 22, 2024 drag show performance.
- b. Defendants, and their employees, agents, servants, officers, and persons in concert with Defendants, are enjoined from enforcing any of the viewpoint- and content-discriminatory prohibitions on expressive activity contained in President Walter Wendler's March 20, 2023 email titled "A Harmless Drag Show? No Such Thing," when making West Texas A&M University facilities or spaces available to Plaintiffs or other student organizations.

1. As explained in the accompanying brief in support, Plaintiffs satisfy each factor for an injunction against public officials pending appeal: (1) they are likely to succeed on the merits of their claims under the First Amendment; (2) continued

violation of their First Amendment rights is an irreparable injury; and (3) an injunction will serve the public interest. *See Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16–20 (2020) (analyzing the factors)

2. While the Court concluded in its September 2023 order denying Plaintiffs’ amended motion for a preliminary injunction (now on appeal) that Plaintiffs’ March 2024 performance was too far away to show irreparable harm (ECF 59 at 25), that is no longer the case. Plaintiffs’ performance is less than two months away, and Defendants have given every sign that they will once again prevent Plaintiffs from exercising their First Amendment rights and taking the stage. Plaintiffs, who are undergraduate college students, require relief well in advance of their performance so they can adequately ticket, advertise, and prepare for the event.

3. Accordingly, Plaintiffs ask this Court to issue an injunction pending appeal. Plaintiffs further respectfully request the Court to expedite consideration of this motion for resolution by February 9, 2024. The parties extensively briefed Plaintiffs’ motion for a preliminary injunction, and that same standard applies to a motion for an injunction pending appeal. *Roman Cath. Diocese*, 592 U.S. at 16–20. Given the ongoing irreparable harm to Plaintiffs’ rights, Plaintiffs intend to seek an injunction pending appeal from the Court of Appeals by Friday, February 9, 2024.

4. A proposed order is attached.

Dated: January 31, 2024

Respectfully submitted,

/s/ JT Morris  
JT Morris  
TX Bar No. 24094444  
Conor T. Fitzpatrick\*

MI Bar No. P78981  
Foundation for Individual Rights and  
Expression  
700 Pennsylvania Ave., SE; Ste. 340  
Washington, DC 20003  
Tel: (215) 717-3473 Fax:  
(267) 573-3073  
jt.morris@thefire.org  
conor.fitzpatrick@thefire.org

Adam B. Steinbaugh\*  
CA Bar No. 304829  
Jeffrey D. Zeman\*  
MI Bar No. P76610  
Foundation for Individual Rights  
and Expression 510 Walnut St.;  
Ste. 900  
Philadelphia, PA 19106  
Tel: (215) 717-3473 Fax:  
(267) 573-3073  
adam@thefire.org  
jeff.zeman@thefire.org

\* Admitted *Pro Hac Vice*

Counsel for Plaintiffs

**CERTIFICATE OF CONFERENCE**

Under Local Rule 7.1, I certify that on January 30, 2024, I conferred about this motion by email with counsel for Defendant Wendler and counsel for Defendants Sharp and Thomas. They stated Defendants oppose this motion.

/s/ JT Morris  
JT Morris

FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION

**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2024, a true and correct copy of the foregoing document was transmitted via using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ JT Morris

JT Morris

FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION